

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-213408.2

DATE: June 28, 1984

MATTER OF: Orvedahl Construction, Inc.--
Reconsideration

DIGEST:

Request to withdraw recommendation that agency terminate an improperly awarded contract is denied where termination costs will not be substantial and agency has not provided any other reason which would justify not terminating the contract.

The Department of the Air Force (Air Force) requests that we reconsider the remedial action we recommended in Orvedahl Construction, Inc., B-213408, April 10, 1984, 84-1 CPD 405.

We will not withdraw our recommendation.

Invitation for bids (IFB) No. F32605-83-B0072 requested separate bids on five line items to remove and replace windows at Grand Forks Air Force Base. The IFB stated that separate awards would be made to the low bidder on each line item. Orvedahl Construction, Inc. (Orvedahl), submitted the low bids on line items Nos. 3 and 5. The Air Force, however, determined that Orvedahl's bid was non-responsive because it contained a handwritten notation that Orvedahl would not accept contract awards totaling more than \$1 million. Contracts for both line items were awarded to Peterson Construction Co. (Peterson), the second low bidder. We sustained Orvedahl's protest against the rejection of its bid and we recommended that the Air Force terminate its contract for item 3 with Peterson and award the contract to Orvedahl.

The Air Force does not dispute our conclusion that Orvedahl's bid should not have been rejected as nonresponsive. The Air Force asserts, however, that because termination costs would be substantial, terminating Peterson's contract would not be in the best interest of the government. The Air Force states that while at the time we made our recommendation Peterson had not begun to perform the contract, Peterson did place orders to have special windows manufactured as required for the contract. The Air Force states that it will be liable for these windows which are

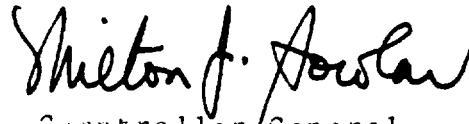
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valued at \$622,000 if Peterson's contract is terminated. The Air Force further states that it considered acquiring these windows and furnishing them to Orvedahl as government-furnished equipment (GFE), but discarded this possibility because it was not sure that Orvedahl would agree to this arrangement and because, even if Orvedahl did agree, it was not certain that Orvedahl's price for labor plus the cost of the windows would be less than the cost of Peterson's contract. The Air Force thus requests that we withdraw our recommendation that it terminate Peterson's contract.

We find that the Air Force has not provided us with a sufficient basis to withdraw our recommendation. Whether an improperly awarded contract should be terminated for the convenience of the government involves consideration of the cost of termination, the extent of performance, the degree of prejudice to other offerors or to the competitive procurement process and the impact of a termination on the procuring agency's mission. Mitchell Construction Company, Inc., et al.,--Request for Reconsideration, B-205246.2, August 18, 1982, 82-2 CPD 148. We have previously found that the preservation of the competitive bidding system may outweigh the cost to the government of terminating an improperly awarded contract. Id. Thus, termination costs in themselves do not justify the failure to terminate an improperly awarded contract unless the costs are substantial. United States Testing Corporation, B-205450, June 18, 1982, 82-1 CPD 604.

In response to the Air Force's request, Orvedahl states that in its bid for item No. 3, it priced the windows at \$514,000. Orvedahl states that it is willing to subtract \$514,000 from its bid price of \$781,000 and perform the contract for \$226,000 with the windows provided as GFE. If the windows were provided to Orvedahl at its bid price, the cost of terminating Peterson's contract would be reduced to \$106,000 (the difference between \$620,000 the price Peterson paid for the windows, and \$514,800, the price Orvedahl submitted in its bid as its cost for the windows). Thus, the cost of terminating Peterson's contract for item 3 would be 13.5 percent of Orvedahl's \$781,000 low bid. We do not believe that this cost is substantial, especially in view of the difference in Orvedahl's bid on item 3 (\$781,000) and Peterson's bid price (\$903,684)--\$122,689. Accordingly, since the Air Force has not provided us with any other basis to justify not terminating Peterson's contract, we will not withdraw our recommendation.

Our initial decision is affirmed.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, prominent "M" and "F".

Acting Comptroller General
of the United States